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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,) No. CR 97-40059 CW &
) CR 07-00344 CW
Plaintiff,)

v.)

**STIPULATION AND ORDER
EXCLUDING TIME**

KENNETH EUGENE HOLLOWAY,)
)
Defendant.)

On September 19, 2007, defendant made his initial appearance in the Northern District of California on an Indictment filed on May 31, 2007, and on a Supervised Release violation filed on September 25, 2006. The defendant was brought before Judge Brazil pursuant to a Writ of Habeas Corpus Ad Prosequendum which was executed by Special Agents for the Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF"). ATF agents executed the Writ because the U.S. Marshals indicated that they were unable to execute the Writ due to the defendant's pending charges in Contra Costa County. The Court then appointed J. Frank McCabe to represent the

1 defendant. The defendant was ordered to appear before Judge Wilken on October 3, 2007. Mr.
2 McCabe made a request for discovery and discovery was provided by the United States. On the
3 same day, the defendant was returned to state custody by ATF agents.

4 Another Writ has been issued by the Court to bring the defendant to the October 3, 2007,
5 hearing before Judge Wilken. However, the U.S. Marshals have again indicated that they will be
6 unable to execute the Writ because the defendant has pending state charges in Contra Costa
7 County. ATF agents are unavailable on October 3, 2007, to execute the Writ and will be out of
8 town on an investigation. Therefore, the defendant will be unable to appear for his October 3,
9 2007, hearing. The parties respectfully request that the hearing be continued until October 24,
10 2007, at 2:00 p.m. ATF agents have stated that they will be available to execute a Writ on
11 October 24, 2007, if needed.

12 The parties stipulate that the time between October 3, 2007, and the next appearance in
13 the matter on October 24, 2007, should be excluded under the Speedy Trial Act, 18 U.S.C. §
14 3161(h)(8), for effective preparation of counsel because discovery was recently provided and
15 counsel needs time to review the discovery. Furthermore, defense counsel will be out on a
16 vacation, which has been planned for some time, on October 5-15, 2007. Thus, the parties also
17 agree that time should be excluded for continuity of counsel. The ends of justice outweigh the
18 interests of the public and the defendant in a speedy trial in this case. This exclusion is
19 necessary to allow time for the parties to effectively prepare and to allow for continuity of
20 counsel taking

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2 into account the exercise of due diligence.

3 IT IS SO STIPULATED.

4 DATED: October 1, 2007

5 /S/
BRYAN R. WHITTAKER
Special Assistant United States Attorney

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7 DATED: October 1, 2007

8 /S/
J. FRANK McCABE
Attorney for Mr. Holloway

9
10 ORDER

11 For the foregoing reasons, the Court orders that the defendant's October 3, 2007, hearing
12 be continued to October 24, 2007, at 2:00 p.m. The Court further finds that good cause is
13 shown—taking into account the public interest—that an exclusion of time between October 3, 2007,
14 and October 24, 2007, is warranted under the Speedy Trial Act because it will afford counsel
15 reasonable time necessary for effective preparation, taking into account the exercise of due
16 diligence. 18 U.S.C. § 3161(h)(8)(B)(iv). Time is also excluded for continuity of counsel based
17 upon defense counsel's vacation. The Court finds that the ends of justice served by excluding
18 time under the Speedy Trial Act outweigh the best interest of the public and the defendant in a
19 speedy trial and in the prompt disposition of criminal cases. Id. at § 3161(h)(8)(A). The Court,
20 therefore, concludes that this exclusion of time is proper pursuant to 18 U.S.C. § 3161(h)(8).
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22 IT IS SO ORDERED.

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24 DATED: October 2, 2007

25 Claudia Wilken
THE HONORABLE CLAUDIA WILKEN
United States District Judge

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